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Re: Comments on FAP 340 (I-355 South Extension)—Draft Supplemental Final
Environmental Impact Statement and Section 4(f) Evaluation

Dear Mr. Kos:

Thank you for the opportunity to submit comments on the Draft Supplemental Final Environmental Impact Statement and Section 4(f) Evaluation for the proposed FAP Route 340 (I-355 South) tollroad extension (the SFEIS). These comments are submitted on behalf of Lincolnway South Corridor Against the Tollway, The Sierra Club, Illinois Chapter, Business and Professional People for the Public Interest, and the Environmental Law and Policy Center of the Midwest (collectively "Commentors").

SUMMARY OF COMMENTS

The draft SFEIS is a disappointing document. Its purpose was to develop a new set of alternatives that would present real choices for how to meet local and regional travel needs for residents of northern Will County. Instead, the document presents no real choices. Rather, it appears to have been crafted from beginning to end to justify a pre-ordained conclusion that a tollroad should be built. The document neither conforms to the requirements of the National Environmental Policy Act, nor provides a service to the residents of northeastern Illinois. Among the document's flaws:

- 1.2
 - ♦ **An unduly narrow discussion of need.** The SFEIS appropriately identifies four general areas of need, but then picks and chooses among objectives from the 2020 Regional Transportation Plan and define the need within each category in such an impermissibly narrow way that only the proposed tollroad could possibly satisfy the need.
- 3.9
 - ♦ **Improperly narrow alternatives.** The SFEIS presents no meaningful choices. The alternatives boil down to three versions of a single road running up the spine of the project corridor. No multi-modal or network-based alternatives were presented. The multi-modal, comprehensive Action Plan alternative presented by the Commentors was completely ignored.
- 3.8
 - ♦ **Inadequate analysis of alternatives.** The transportation benefits of the alternatives were compared using inappropriate criteria. Detrimental impacts

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of the tollroad alternative on local roads were not disclosed. The comparative environmental impacts of the various alternatives were not analyzed, in direct violation of NEPA.

In numerous respects, the SFEIS fails to meet NEPA standards. The document requires major revisions.

DETAILED COMMENTS ON THE SFEIS

I. IDOT'S UNREASONABLY NARROW PURPOSE AND NEED STATEMENT ELIMINATES A RANGE OF REASONABLE ALTERNATIVES FROM CONSIDERATION

The framework for IDOT's Purpose and Need section is four needs that IDOT states "were identified by comparing the level of transportation service within the Project corridor against the level of service goals and objectives of the 2020 Regional Transportation Plan (2020 RTP)." (SFEIS at 1-2.) Each of the four needs addresses a broad transportation-planning goal that could be met by implementing a number of transportation and land use strategies. In and of themselves, the four identified needs appropriately set forth transportation goals that would allow IDOT to consider a range of alternatives which would accomplish those goals. However, IDOT proceeds to define each of the four needs in unreasonably narrow, result-oriented terms that call for the building of the I-355 south extension and eliminate from consideration an entire range of potentially viable alternatives.

Throughout this section of the SFEIS, IDOT impermissibly describes the purpose and need in constricted terms that require a single, north-south road through the narrow Project corridor linking I-80 and I-55. IDOT's definitions of purpose and need further limit the options for this north-south road by requiring that it be designed so that its capacity and speed "match the functional design" of the interstate highway system and make it part of the "I-290/I-355 beltway." (See SFEIS at 1-12, 1-14, 1-17.) For example, IDOT states:

- "The purpose of the proposed action is to provide a Transportation System Improvement that will improve north-south mobility between I-55 and I-80 to accommodate projected year 2020 travel demand within the Project corridor and northeastern Illinois." (SFEIS at 1-1.)
- "Regional mobility is constrained by the lack of a direct north-south route linking I-55 with I-80 that is of adequate capacity and design speed to efficiently move regional travel." (SFEIS at 1-11 (emphasis added).)
- "A Transportation System Improvement is needed to connect I-80 to the I-290/I-355 beltway to improve mobility for regional travel originating outside the Project corridor. Additionally, a Transportation System Improvement is needed to improve access to the interstate system from within the Project corridor" (SFEIS at 1-12 (emphasis added).)

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- "[A]dding capacity in a form that integrates into the existing highway network is also needed. This includes providing a Transportation System Improvement that matches the functional design of the system for which it connects." (SFEIS at 1-14 (emphasis added).)
- "A Transportation System Improvement is needed to continue the I-290/I-355 beltway to provide a more direct north-south transportation corridor between I-55 and I-80, thereby improving regional mobility." (SFEIS at 1-17 (emphasis added).)

These statements clearly set forth IDOT's view of the purpose and need for the proposed action: to construct one road, running north-south from I-80 to I-55 within the confines of Project corridor, that will serve as a high-speed, high-capacity continuation of the I-290/I-355 beltway. Given this exceedingly narrow definition, only one project can satisfy the purpose and need: the I-355 South extension.

1.3 A. The National Environmental Policy Act Prohibits IDOT's Unreasonably Narrow Definition Of Purpose And Need

5.1 The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4370, requires that an agency conduct a "searching inquiry into alternatives" prior to undertaking an action that will significantly affect the quality of the human environment. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997). Before it can determine the reasonable alternatives that it must consider, an agency must define the purpose of the project. Id. NEPA case law dictates that "an agency may not define the objectives of its actions in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). Like many courts, the Seventh Circuit has recognized the dangers of an unduly narrow definition of purpose and need:

One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of congressional will. If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. 42 U.S.C. § 4332(2)(E).

Simmons, 120 F.3d at 666.

In *Simmons*, the Seventh Circuit found itself confronted "with an example of this defining-away of alternatives" that is strikingly similar to IDOT's drafting of the SFEIS statement of

¹ IDOT defines the project corridor as a narrow strip around the north-south axis of the I-355 South extension corridor. Despite the fact that the decision to set the corridor boundaries in this way necessarily leads IDOT to focus on certain alternatives and eliminate others, IDOT does not explain how it arrived at these boundaries.

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purpose and need. Id. The real purpose of the project at issue in the *Simmons*' EIS was to supply Marion and the Lake of Egypt Water District with more water. Id. at 669. However, the Army Corps of Engineers defined the project's purpose as "finding or creating a single source to supply both Marion and the Lake of Egypt Water District." Id. As a consequence of narrowing the purpose of the project to supplying two users with water from a single source, the Corps limited its analysis of alternatives in the EIS to single-source alternatives. Id. at 667. The Court found this view of the project's purpose impermissibly narrow because it prevented the Corps from even considering the full range of alternatives. Id. According to the Court:

Over a decade ago, we held that "the evaluation of 'alternatives' mandated by NEPA is to be an evaluation of alternative means to accomplish the general goal of an action." The general goal of Marion's application is to supply water to Marion and the Water District—not to build (or find) a single reservoir to supply that water. ... An agency cannot restrict its analysis to those "alternative means by which a particular applicant can reach his goals."

Id. at 669 (citations omitted).

Here, the general goals set forth in the four identified needs may be met by a range of alternatives, including by increasing the capacity of multiple north-south and east-west routes in the Project corridor and improving transit service. IDOT, like the Corps in *Simmons*, has narrowed these four needs down to the goal of providing a single north-south road linking I-80 and I-55. Thus, with the exception of the stand-alone transit alternative, IDOT's alternative analysis is unduly focused on providing or improving a single north-south route through the corridor.² Through its constricted interpretation of the four needs, IDOT further narrows the purpose of the project to a single road that will "match the functional design" of the highway network and continue the I-290/I-355 beltway. Because this definition clearly eliminates a full range of reasonable alternatives from consideration, it violates NEPA.

1.4 B. IDOT's Needs Analysis Ignores Numerous Critical Goals Identified In The Regional Transportation Plan

IDOT explains in the SFEIS that it identified the four principal needs for the project by comparing the level of transportation service within the Project corridor against the thirty-nine level of service goals and objectives of set forth in the 2020 RTP. (SFEIS at 1-2.) In reducing the thirty-nine goals and objectives of the 2020 RTP to four principal needs, IDOT clearly omits a number of critical goals. While it is understandable that IDOT could not factor all thirty-nine³ of the RTP's objectives into its statement of the needs for this project, narrowing this list to only four needs unnecessarily limits IDOT's ability to consider potentially effective solutions and to fully evaluate the proposed alternatives.

² Although IDOT's Enhanced Arterial Alternative includes improvements to three crossings over the Des Plaines River, it improves only one north-south road leading to the river crossings.

³ Although the 1998 version of the 2020 RTP delineated thirty-nine objectives, the more recent version of this document, completed in 2000, identifies forty-six objectives.